

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JANELL BRACEY

PLAINTIFF

VS.

CIVIL ACTION NO. 3:19-cv-25-HTW-LRA

HUMANA INSURANCE COMPANY
AND JOHN DOES 1-10

DEFENDANT

NOTICE OF REMOVAL

Humana Insurance Company (“Humana”) removes the civil action styled *Janell Bracey v. Humana Insurance Company, and John Does 1-10*, Civil Action No. 18,0825-CO, from the County Court of Warren County, pursuant to 28 U.S.C. §§ 1331, 1367, 1441, 1446 and L.U.Civ.R. 5(b) on the following grounds:

I. BACKGROUND

1. Plaintiff, Janell Bracey (“Plaintiff”), filed this Complaint on November 19, 2018, against Humana Insurance Company and John Does 1-10. The lawsuit arises out of the alleged failure to pay out health benefits under Plaintiff's health benefits insurance policy.

2. Humana was served with a copy of the Summons and Complaint, through its registered agent for service of process, CSC, on or about December 12, 2018. Thus, this Notice of Removal is timely filed, *i.e.*, no more than thirty (30) days after service of process of the state-court action on Defendant.

3. As of the date of this Notice of Removal, no other Defendants have been served or properly joined in this matter.

II. VENUE

4. Venue is proper in the United States District Court for the Southern District of Mississippi, Northern Division because that is the district in which the state court action was filed. *See* 28 U.S.C. §§ 1446(a), 104(b)(1).

III. BASIS FOR REMOVAL: FEDERAL QUESTION

5. In her Complaint, Plaintiff alleges that she was insured by Defendant, Humana, and lists her member identification number as proof. Complaint, ¶ 7. The referenced “insurance” is actually a Certificate of Coverage issued to the Plaintiff as a member of an employer sponsored benefit plan, which is sponsored by Plaintiff’s employer and insured by Humana (the “Plan”). Plaintiff claims that Humana failed and refused to honor its obligation to pay benefits afforded Plaintiff pursuant to her policy. Complaint, ¶ 11.

6. The plan was established pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”) and the policy of insurance issued to Plaintiff’s employer and the Certificate of Coverage issued to Plaintiff are governed by ERISA.

7. Plaintiff’s claim, as stated in her Complaint, is a claim by a participant of an employee welfare benefit plan to recover the cost of benefits allegedly due under the terms of an ERISA benefit plan for which this Court has jurisdiction without regard to the amount in controversy or diversity of citizenship and is one that may be removed to this Court under the provisions of 28 USC § 1441.

8. The above-described action is one over which the United States District Court has original jurisdiction pursuant to 28 U.S.C. §1331, and as much as the matter involves the interpretation and clarification of rights under an employee welfare benefit plan established pursuant to ERISA. ERISA preempts the state law claims contained in Plaintiff’s Complaint and provides the exclusive federal remedy for resolution of her claims.

9. A cause of action filed in state court which is preempted by ERISA and comes within the scope of § 502(a) is removable to federal court under 28 U.S.C. § 1441, as an action arising under federal law, even when the ERISA related nature of the action does not appear on the Complaint's face. "Because ERISA preemption is so comprehensive, it can provide a sufficient basis for removal to federal court even though it is raised as a defense, notwithstanding the 'well-pleaded complaint' rule. *Hubbard v. Blue Cross and Blue Shield Assoc.*, 42 F.3d 946, fn5 (5th Cir. 1995), citing *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 66, 107 S.Ct. 1542, 1547–48, 95 L.Ed.2d 55 (1987). Therefore, this Court has original federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(a).

10. Any claim or cause of action stated by Plaintiff in her Complaint as to which the District Court of the United States might not otherwise have original jurisdiction are appropriate to be heard by this Court pursuant to the doctrine of supplemental jurisdiction, 28 U.S.C. § 1367, and removal to this Court is appropriate pursuant to applicable law, including 28 U.S.C. § 1441.

IV. ADDITIONAL REQUIREMENTS

11. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon Humana in this action are attached as Exhibit A to this Notice. A copy of the entire state court record will be filed in this action.

12. A Notice of Filing will also be filed with the Clerk of Court for the County Court of Warren County, Mississippi.

WHEREFORE, Defendant, Humana Insurance Company, prays that this matter be removed to the United States District Court for the Southern District of Mississippi and that this Honorable Court take and assume full and complete jurisdiction over this lawsuit and with Defendants, Humana Insurance Company, be granted such other relief as this Court deems just and proper.

This the 10th day of January, 2019.

Respectfully submitted,

HUMANA INSURANCE COMPANY

By Its Attorneys,

BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ, PC

By: s/Jean C. Bertas
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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of January, 2019, a copy of the above and foregoing *Notice of Removal* has been served on the following counsel of record by email and by placing same in the United States Mail, postage prepaid and properly addressed.

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s/Jean C. Bertas
JEAN C. BERTAS